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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 195

MARTIN G. TAUB; JOSEPH B. WOHLMAN; ABNER B. TAUB; and CHARLES HOFFMAN, of Jersey City, New Jersey, *Petitioners,*

v.

CHESTER BOWLES, PRICE ADMINISTRATOR.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS AND BRIEF IN SUPPORT THEREOF.

IRWIN GEIGER,
Attorney for Petitioners,
Tower Building,
Washington, D. C.

Of Counsel:
CUMMINGS & STANLEY
MAX O'RELL TRUITT
1616 K Street, N. W.
Washington, D. C.

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v.

CHESTER BOWLES, PRICE ADMINISTRATOR.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This petition for writ of certiorari is directed against a judgment of the United States Emergency Court of Appeals dismissing petitioners' complaint in that Court for lack of jurisdiction. Petitioners were indicted in the United States District Court for the District of New Jersey for conspiracy to commit offenses against the United States, 18 U. S. C. A. 88. These offenses include inter alia violations of Section 4 (a) of the Emergency Price Control Act of 1942, as amended, (Act January 30, 1942, C. 26, Stat. 23), and Maximum Price Regulations 193 and 445 issued by the Price Administrator under the presumed authority of said

Act. On October 10, 1944, pursuant to and in compliance with the provisions of Section 204(e), Emergency Price Control Act of 1942, as amended, petitioners herein duly filed their petition[1] with the United States District Court for the District of New Jersey praying for leave to file a complaint in the United States Emergency Court of Appeals. Said petition was granted on November 6, 1944.[2]

On December 5, 1944, petitioners seasonably filed their complaint in the court below, said cause being docketed as No. 188 in that court. The complaint[3] specifically challenged the validity of Maximum Price Regulations 445 and 193, Section 1420.13, and generally all regulations, price schedules and orders purporting to regulate intoxicating liquors (termed "distilled spirits" in the regulations) under authority of the Emergency Price Control Act of 1942, as amended. The grounds upon which petitioners laid their complaint as summarized in the opinion[4] of the court below were:

> ". . . that federal regulation of prices of intoxicating liquor conflicts with the Twenty-first Amendment to the Constitution; and, in the alternative, if the regulations are deemed within the federal constitutional power, that intoxicating liquor is not a commodity which Congress intended to be regulated; that such regulation subserves no purpose of the Act, and that the regulations are invalid by reason of failure of the Administrator to obtain approval of the Secretary of Agriculture as required by Section 3, Subsections a, b, c, d, and 4 of the Act."

The Price Administrator moved to dismiss on various grounds, but one of which is pertinent, namely, that the case at bar, being one for conspiracy to violate the provisions of the Emergency Price Control Act of 1942, as amended, is

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[1] R. 4-12.
[2] R. 13-15.
[3] R. 1-3.
[4] R.82.

* All record references are to pagination in Transcript of Record filed in United States Supreme Court.

not a criminal proceeding brought pursuant to Section 205 of that Act, in consequence of which the United States Emergency Court of Appeals is without jurisdiction to determine the validity of regulations of the Price Administrator thus brought into issue.[5] The court below held[6] (one judge dissenting in part):

> ". . . that Congress has not given us jurisdiction under Section 204 (e) (1) to entertain a complaint challenging the validity of a regulation when the charge is conspiracy."

It accordingly dismissed the complaint, after undertaking by way of obiter to dispose of the question of validity on the merits,[7] although the factual record of necessity was incomplete, the case not having reached a state where, in view of the Court's contention that it lacked jurisdiction, evidence could have been properly offered.[8]

JURISDICTIONAL STATEMENT.

The jurisdiction of this Court to entertain this petition for a writ of certiorari to review the judgment of the United States Emergency Court of Appeals is invoked under favor of Section 204 (d) of the Emergency Price Control Act of 1942, as amended, (Title 50, Appendix U. S. C. A., Section 924 (d)):

> "(d) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, Title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposi-

[5] R. bottom 31-40.
[6] R. 85.
[7] R. 85-88.
[8] R. top 44.

tion of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2 (section 902 of this Appendix), of any price schedule effective in accordance with the provisions of section 206 (section 926 of this Appendix), and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision."

The judgment below against which this petition for a writ of certiorari is directed was entered on June 6, 1945.

QUESTIONS PRESENTED.

The questions presented by petitioners are as follows:

1. Has the United States Emergency Court of Appeals jurisdiction to determine the validity of Office of Price Administration regulations drawn into issue in an indictment for conspiracy under 18 U. S. C. A., Section 88, upon a complaint seasonably filed in that Court pursuant to leave duly granted by the United States District Court in compliance with the provisions of Section 204 (e) (1) of the Emergency Price Control Act of 1942, as amended?

2. Is 18 U. S. C. A., Section 88, (the "dragnet" conspiracy statute) a lawful vehicle for prosecuting alleged agreements to violate Section 5 (a) of the Emergency Price Control Act of 1942, as amended, in view of the specific provision of that section condemning such unlawful agreements as substantive offenses under that section?

3. In the light of its legislative and judicial history, is not intoxicating liquor "sui generis" whose regulation is a matter of local and not federal concern so as to preclude the Price Administrator acting under color of authority presumably granted him by the Emergency Price Control Act of 1942, as amended, from lawfully promulgating regulations purporting to establish maximum ceiling prices for the sale or purchase of intoxicating liquors?

4. Does not the Twenty-first Amendment (Section 2) of the Constitution of the United States exempt intoxicating liquor from regulation under the Emergency Price Control Act of 1942, as amended?

5. In the light of the determination of the court below that it is without jurisdiction to determine the validity of a regulation which forms the substantive basis for a prosecution for conspiracy under 18 U. S. C. A., Section 88, thus depriving the accused of any forum wherein the validity of the regulation in question may be lawfully challenged, does not prosecution under such circumstances constitute a denial of due process?

6. Assuming arguendo that intoxicating liquor is a commodity which may constitutionally be regulated under the Emergency Price Control Act of 1942, as amended, does the establishment by the Price Administrator of maximum ceiling prices for intoxicating liquors subserve any of the purposes contemplated by that Act?

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT OF CERTIORARI.

1. The questions presented for consideration involve the determination of problems of jurisdiction and procedure under an important federal statute which vitally affect the orderly administration of justice. These questions have not been heretofore presented for consideration here and should be settled by this Court.

2. The conclusion of the United States Emergency Court of Appeals that it lacks jurisdiction is in direct conflict with the decision of the Fourth Circuit, United States Circuit Court of Appeals, in *Old Monastery Co.* v. *United States of America* (147 F. (2d) 905), decided February 13, 1945, rehearing denied June 12, 1945.

3. The impact of the Twenty-first Amendment upon the Emergency Price Control Act under which the Price Administrator purports to regulate the local price of intoxicating liquor (assuming that the constitutional question is properly before this Court in the present posture of the case) presents an important question of Federal law which should be settled by this Court.

Wherefore, your petitioners respectfully pray that the writ of certiorari may issue out of and under the hand and seal of this Court directed to the United States Emergency Court of Appeals commanding said Court to certify and send to this Court a full and complete transcript of the record and all proceedings of said United States Emergency Court of Appeals in said cause therein entitled *Martin G. Taub, et al., Complainants,* v. *Chester Bowles, Price Administrator, Respondent,* No. 188, to the end that said cause may be reviewed and determined by this Court and that judgment of said United States Court of Appeals in said cause may be reversed by this Court.

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JOSEPH B. WOHLMAN,
ABNER B. TAUB, and
CHARLES HOFFMAN,
of Jersey City, New Jersey,
Petitioners.

By IRWIN GEIGER,
Attorney for Petitioners,
102 Tower Building,
Washington, D. C.
(National 8949)

Of Counsel:
CUMMINGS & STANLEY
MAX O'RELL TRUITT
1616 K Street, N. W.
Washington, D. C.